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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.864 of 2001

APPELLANT	Peddi Bichcham, s/o Somaru, aged about 42 years, r/o Chintalnar, Maharapara, P.S. Jagargunda, Distt. Dantewada (C.G)
	Versus
RESPONDENT	State of Chhattisgarh, through the Station House Officer, Police Station Jagargunda.

Appearance:

Shri Vimlesh Vajpai, counsel for the appellant.

Shri Satish Gupta, Deputy Govt. Advocate, for the State.

DB: **Hon'ble Shri Justice L.C. Bhadoo, &**
Hon'ble Shri Justice Sunil Kumar Sinha, J. J.

ORAL JUDGMENT
(25.10.2007)

The following judgment of the Court was passed by

L.C. Bhadoo, J,

(1) This appeal is directed against the judgment of conviction and order of sentence dated 27.7.2001 passed by III Addl. Sessions Judge, Jagdalpur, in Sessions Trial No.162/2001 whereby and whereunder the learned Addl. Sessions Judge, after holding the accused appellant guilty for the commission of the offence punishable u/s 302 I.P.C., for committing murder of his wife namely Smt. Soni Bai by setting her on fire, sentenced him to undergo life imprisonment but no fine was imposed on account of poor financial condition.

(2) The case of the prosecution in brief is that at about 8 - 9 p.m. in the night of 18.12.2000 the accused Peddi Bichcham after pouring kerosene oil on the body of Smt.Soni, set her on fire with the help of burning wood. She was immediately taken to the Jagargunda hospital. The matter was reported by Munnu Singh and Surya Rao in the Police outpost Chitalnar which was

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registered in the Rosnamcha at Serial No.64 at about 11 p.m. in the night, on the basis of which, the First Information Report Ex.P.12 was registered. The report given by Erli Penta (P.W.8) was recorded in the Rosnamcha Sanha Ex.P.13 & P-14. After registration of the Crime, the investigating officer left for the scene of occurrence. He seized the soil mixed with Kerosene oil and plain soil from the place of occurrence. The burnt piece of wood by which Smt.Soni was set on fire, one Plastic Jeri Cane containing 100 ml. kerosene, one old Sari one petticoat, one brazier and one blouse were seized under Ex.P.1. The burn injuries of victim Soni were examined in the Primary Health Centre Jagargunda by Dr.Kamal Singh Sethe (P.W.2) and he prepared injury report Ex.P.3. Dr.Kamal Singh Sethe recorded the dying declaration of Smt. Soni Ex.P.7. The site plan Ex.P.8 was prepared by the Halka Patwari. Merg intimation Ex.P.11 was sent to the Police Station Jagargunda. The I.O., prepared the inquest Ex.P.15 on the body of deceased. On account of burn injuries Smt.Soni died on 31.1.2001 and on 1.2.2001 the postmortem was conducted by Dr.Kamal Singh Sethe. He opined that the death of was due to septic shock and severe malnutrition as a result of fire injury which was antemortem in nature. He prepared postmortem report Ex.P.4. After completion of investigation, the charge sheet was filed in the Court of Judicial Magistrate, First Class, Sukma, who in turn committed the case to the Sessions Judge, Jagdalpur, from where the III Addl. Sessions Judge, Jagdalpur, received the case on transfer for trial.

(3) In order to establish the charge against the accused, the prosecution examined 9 witnesses. The statement of the accused was recorded u/s 313 Cr.P.C. in which he denied the material appearing against him and stated that he is innocent and he has been falsely implicated in the crime in question.

(4) The learned Addl. Sessions Judge after hearing counsel for the respective parties convicted the sentenced the accused as aforementioned.

(5) We have heard Shri Vimlesh Vajpai, counsel for the appellant and Shri Satish Gupta, Deputy Govt. Advocate, for the State.

(6) Learned counsel for the appellant has not disputed the homicidal death of Smt.Soni. More over, P.W.2 Dr. Kamal Singh Sethe has stated that he was working as Assistant Surgeon in Primary Health Center, Jagargunda, on 11.12.2000 Smt.Soni was brought to the hospital and he examined her injuries, there were two types of injuries on her body that is superficial and deep burn injuries on the chest, hands, infront of the head, face and the abdomen. The burn injuries were extending from 40 – 45%. His report is Ex.P.3. He has further stated that on 01.12.2001, he conducted the postmortem on the body of deceased. The body was stinking. There were burn injuries on the face, abdomen, both the thighs & shoulders and hands. There were also injuries on other parts of the body also. There were marks of burn injuries behind the hand. There were injuries on the neck and at Umbilicus region. He has further stated that the cause of death was septic shock and malnutrition due to burn injuries. His report is Ex.P.4. Therefore, in view of the above medical evidence and postmortem report Ex.P.4, it is established that the death of Mrs.Soni was homicidal in nature. As far as complicity of the accused in crime in question is concerned, in this case, all the eye witnesses have turned hostile. The conviction rests on the dying declaration Ex.P.7 recorded by Dr.Kamlesh Singh Sethe (P.W.2).

(7) Learned counsel for the accused appellant argued that in the dying declaration Ex.P.7 the time is not mentioned. He further argued that the victim survived for about one month and 20 days and even then her dying declaration was not recorded before any Magistrate. He also submitted that it has been mentioned that the dying declaration was recorded in presence of two witnesses and those witnesses have not been examined, therefore, on such a dying declaration, conviction cannot be based. It is settled law that it is not necessary that the dying declaration is to be recorded only by the Magistrate. The dying declaration can be recorded even by a Police Officer or a Doctor or any responsible person.

There is no requirement of law that the dying declaration is recorded by the Magistrate only. It is true that the witnesses before whom the dying declaration was recorded have not been examined and even time is not mentioned. The non-mentioning of time is not important as the witnesses have not been examined, therefore, the Court is required to scrutinize the evidence of the Dr. Kamal Singh Sethe (P.W.2) with great care and circumspection in order to reach the conclusion that whether the deceased was in a fit state of mind to give statement, she was able to identify the accused, the dying declaration was voluntary and true and it was not the out come of tutoring or was subjected to influence by anybody. P.W.2 Dr.Kamal Singh Sethe has stated that on 11.12.2000 that is from the next day of the incident, he recorded the dying declaration of Smt.Soni, wife of Peddi Bichcham, aged about 32 years and after recording the dying declaration, her thumb impression was obtained. She was able to talk and as per the disclosure made by Smt.Soni, he recorded the dying declaration Ex.P.7. In the cross examination of this witness, he has stated that when the victim was brought to the hospital, she was burnt to the extent of 40-45%, she was conscious and was able to speak. She remained in hospital from 12.12.2000 to 12.1.2001 and the wounds started healing. The burning injuries which were superficial were healed but the wounds of deep burns are still there. The family members were advised to take her to somewhere else for treatment, but financially they were not in a position to take her to somewhere, therefore, she was referred to the District Hospital. In the cross examination of this witness, the defence has not been able to bring on record any circumstance by which it can be reached to the conclusion that the dying declaration was not recorded by him or Smt.Soni was not in fit state of mind to give statement or she was subjected to tutoring or influence, therefore, there is no reason for this Court to disbelieve the evidence of this Doctor and even the trial Court has also reposed confidence on the evidence of Doctor regarding recording of dying declaration. Without any cogent and plausible reason, the finding recorded by the trial Court as also the evidence given by the Doctor Kamal Singh Sethe cannot be rejected or discarded.

(8) In the matter of ***Mange Ram and another –vs- The State Delhi Administration, 1998 Cri.L.J. 2269*** the Apex Court held that the dying declaration recorded by the I.O., and Doctor if found reliable and consistent and as per the medical evidence the deceased was in full senses and able to speak clearly when brought to the hospital then the evidence of witness that he was under the influence of liquor could not be believed.

(9) A perusal of dying declaration Ex.P.7 reveals that Mrs.Soni has stated that her husband asked her that she is marrying another person, on which she replied that she is mother of 4 children, why she should marry to another person, her husband brought the kerosene oil, poured on her and picked up a burnt wood where she alongwith her husband were sitting and set her on fire. She further stated that this incident happened at 8 p.m. The above statement of Mrs.Soni stands corroborated by the injury report Ex.P.3, she was immediately taken to the hospital where Dr.Kamal Singh Sethe himself examined and treated her. Therefore, there is no reason for this Court to disbelieve the said dying declaration recorded by P.W.2 Dr.Kamal Singh Sethe and it is settled law that if the dying declaration is voluntary, true and inspires confidences of the Court, conviction can be based on the same without any corroboration. Therefore, the trial Court has rightly held that the accused was the author of crime in question.

(10) Learned counsel for the accused appellant further argued that in this case, the incident happened on 10.12.2000 whereas Mrs.Soni died on 31st of Jan. 2001 i.e., after about one month and 22 days and as per the evidence of the Doctor, she remained in Jungarguda Hospital about one month where the superficial injuries were already healed, deep burn injuries were still under process of healing and the family members of the deceased were advised to take her somewhere else for treatment but they were not in a position, therefore, proper treatment was not provided to the victim and as per the evidence of Doctor, if proper treatment was given to deceased she could have survived. Therefore, the intention of the accused, in the facts and circumstances of this case, for committing murder of his wife is missing. As such the

offence against the accused does not travel beyond section 304 Part-II of I.P.C.

(11) On the other hand, Mr. Satish Gupta, Dy.Govt. Advocate, supported the judgment of the trial Court.

(12) The argument of Mr.Vimlesh Vajpai, deserves merit. As per the doctor's evidence, Mrs.Soni sustained 40-45% of burn injuries, her superficial burn injuries were already healed, deep wounds were in healing process and the family members were advised to take her to other hospital for treatment but on account of their poor financial condition, there were not able to take her somewhere else. The Doctor has further stated that if proper treatment was given to Mrs.Soni, there were chances of her survival. It is admitted position that she died after one month & 22 days. Moreover, there were no previous differences between the husband and wife. Even the *Rosnamcha* report Ex.P.13 was given by Erli Penta just after the incident at about 11 p.m. in the said night. A perusal of the same shows that at about 8-9 p.m. in the night the deceased and the accused both were sitting in front of fire, they were warming their bodies and at that time, there was some altercation between the two which enraged the accused and in a heat of passion without preparation and premeditation, all of a sudden, the accused brought Keroseneoil, poured on her, picked a burning wood and set her on fire. In these circumstances, it cannot be said that the accused had set her on fire with an intention to cause death but the knowledge can definitely be attributed looking to the facts and circumstances of the case, the manner in which she was set on fire and even the victim Mrs.Soni could have survived had there been a proper treatment provided to her. Therefore, the conviction and sentence imposed on the accused u/s 302 I.P.C. cannot be sustained and the offence against him does not travel beyond section 304-Part II of I.P.C.

(13) In the result, the appeal partly succeeds. The conviction and sentence imposed upon the appellant u/s 302 I.P.C. are set aside. Instead thereof, he is convicted u/s 304 Part-II, I.P.C. and sentenced to undergo 7 years R.I. It is stated that the accused is

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in detention since 24.1.2001 till today. The accused shall be entitled for set off for the period of detention against the sentence imposed upon him.

Sd/-
L.C.BHADOO
Judge

Sd/-
SUNIL KUMAR SINHA
Judge

/Rao/